IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21345 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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MALABHAI CHHAGANBHAI BHABHOR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR ARVIND K THAKUR for Petitioner(s) : 1,MR KS TAMAYACHE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/12/2005

ORAL JUDGMENT

1.Malabhai Chhaganbhai Bhabhor, petitioner has filed this petition of habeas corpus challenging the order of detention dated 26/8/2005 passed by the Commissioner of Police, Vadodara, detaining authority, under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. Petition has been filed on 28/9/2005 and matter was placed before this Court (Coram:K.M.Mehta, J.) on 22/11/2005. On that day, this Court has issued rule, which is returnable. Therefore, the matter is come for final hearing in this Court.

2. It is the case of the petitioner that earlier petitioner was arrested and so when the order of detention was passed, he was already in the jail.

3. Learned advocate for the petitioner has invited my attention to the order detention and also the grounds of detention supplied by the authority. In the grounds of detention, it is stated that two offences have been registered against the detenu which are as under:

3.1) Offence committed at Gorva Police Station where the criminal case no.93 of 2005 was registered. Offence was committed on 17/4/2005 under Section 454, 457, 380 and 114 of IPC. It was also alleged that he has committed theft of gold and silver ornaments and cash of Rs.5,000/-, in all valued at Rs.15,900/-. Out of that some amount i.e. Rs.13,700/- has been recovered.

3.2) Offence committed at Gorva Police Station where the criminal case no.175 of 2005 was registered. Offence was committed on 16/4/2005 under Section 454, 457, 380 and 114 of IPC. It was also alleged that he has committed theft of gold and silver ornaments valued at Rs.15,700/-.

4. It is also mentioned that two statements of anonymous witnesses under Section 9(2) of the Act has also been recorded.

5. It was alleged that petitioner carrying on anti social activities and therefore, he happened to be a dangerous person under the provisions of PASA Act.

6. The learned advocate for the petitioner stated that the petitioner cannot be treated as Dangerous Person. In view of the same, the learned advocate has relied upon the Hon'ble Supreme Court judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491 and Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok

Balabhai Patel. He has also relied upon the judgment of Division Bench of this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai, reported in 2000 (1) GLR 816 and another judgment of this Court (Coram:K.M.Mehta, J.) in the case of Rajubhai Pratapbhai Panpatil v. Commissioner of Police in Special Civil Application No.20420 of 2005 decided on 15/11/2005.

7. Mr.L.R.Pujari, learned APP appearing on behalf of the respondent has supported the order of detention and for the same, he has relied upon the grounds of detention as well as affidavit of Mr.Deepak Swaroop. In the affidavit it is stated that the authority has considered all the aspects and authority has satisfied that he is a dangerous person under Section 2(c) of the PASA Act. The authority has considered the fact that the fear expressed and apprehension raised by them is found to be quite real, proper, genuine and reasonable. The authority has also considered the statements recorded under Section 9(2) of the PASA Act.

8. I have considered the facts and circumstances of the case. I have also considered the various judgments of the Hon'ble Supreme Court as well as Division Bench of

this Court.

9.Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. There is no material to shows that activities of the detenu affects the public order. There is only two cases which are of theft of silver and gold ornaments and therefore, petitioner cannot be treated as dangerous person alleged. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division bench Judgment of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balalbhai Makwana and another judgment of this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai, reported in 2000 (1) GLR 816. And therefore, the order of detention is required to be quashed and set aside.

10.Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal cases alone cannot be

said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes or the activities of theft of the detenu. There has to be nexus and link for such activities which disturbs the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in the case of Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the division Bench of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balalbhai Makwana, judgment of division bench this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai, reported in 2000 (1) GLR 816 and judgment and order dated 15/11/2005 in Special Civil Application No.20420 of 2005 in the case of Rajubhai Pratapbhai Panpatil, in my view, it cannot be

said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the authority cannot be sustained and is required to be quashed and set aside.

11. In the result, petition is allowed. The order of detention is quashed and set aside. Malabhai Chhaganbhai Bhabhor, detenu is ordered to be set at liberty if not required in any other case. Direct service is permitted with no order as to cost.

(K.M.MEHTA, J.)

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